

No. 14596

United States
Court of Appeals
for the Ninth Circuit

JERRY LEE REESE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Northern Division.

FILED

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PAUL P. O'BRIEN,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States for the
Northern District of California, Northern
Division

Cr. 11195

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JERRY LEE REESE,

Defendant.

INDICTMENT

Violation: Section 12(a), Universal Military Training
and Service Act, 50 U.S.C. App. 462(a).

The Grand Jury Charges:

That Jerry Lee Reese, the defendant herein, being a male citizen of the age of 24 years, residing in the United States and under the duty to present himself for and submit to registration under the provisions of Public Law 759 of the 80th Congress, approved June 24, 1948, known as the "Selective Service Act of 1948," as amended by Public Law 51 of the 82nd Congress, approved June 19, 1951, known as the "Universal Military Training and Service Act," hereinafter called "said Act," and thereafter to comply with the rules and regulations of said Act, and having, in pursuance of said Act and the rules and regulations made pursuant thereto, became a registrant of Local Board No. 11 of the Selective Service System in the City of Oroville, County of Butte, State of California, which

said Local Board No. 11 was duly created, appointed and acting for the area of which the said defendant is a registrant, did, on or about the 26th day of February, 1954, in the City of Oroville, County of Butte, State and Northern District of California, knowingly fail to perform such duty, in that he, the said defendant, having theretofore been duly classified in Class I-O, did then and there knowingly refused and fail to comply with the order of his said Local Board No. 11 to report to his said Local Board No. 11 to be given instructions to proceed to a place of employment designated by said Local Board No. 11 for the purpose of doing civilian work contributing to the maintenance of the national health, safety and interest as provided in the said Act and the rules and regulations made pursuant thereto.

A True Bill.

/s/ FRITZ KAMINSKY,
Foreman.

LLOYD H. BURKE,
United States Attorney;

By /s/ JAMES S. EDDY,
Assistant U. S. Attorney.

Bail, \$1,000.00.

/s/ OLIVER J. CARTER.

[Endorsed]: Filed July 12, 1954.

[Title of District Court and Cause.]

MOTION FOR JUDGMENT
OF ACQUITTAL

May It Please the Court:

Now comes the defendant and moves the court for a judgment of acquittal for each and every one of the following reasons:

1. There is no evidence to show that the defendant is guilty as charged in the indictment.

2. The Government has wholly failed to prove a violation of the Act and Regulations by the defendant as charged in the indictment.

3. The denial of the ministerial classification is illegal, arbitrary and capricious because the draft boards employed artificial standards in determining what constitutes a minister of religion within the meaning of the Act and Regulations; and they did not follow the definition of the term used in the Act and Regulations in determining the claim of the defendant as a minister of religion.

4. The denial of the ministerial classification by the draft boards was arbitrary and capricious in that they held that the performance of secular work by the defendant, alone, without determining whether it was his avocation and used his performance of secular work to defeat illegally his ministerial status because the undisputed evidence showed that he is not engaged in secular work as a main business but only incidentally to his main

work of the ministry, and that, according to the Act and Regulations he is regularly and customarily engaged in teaching and preaching the doctrines and principles of a recognized church and pursues such preaching work as his vocation and does not preach incidentally to the performance of any secular work; and, therefore, the draft board order is illegal, contrary to law and without basis in fact.

5. The denial of the claim for exemption as a minister of religion by all of the draft boards, and each of them, is without basis in fact, arbitrary, capricious and contrary to law.

6. The order of the local board for defendant to perform civilian work at the Los Angeles County Department of Charities and sections 1660.1 and 1660.20 of the Selective Service regulations are in conflict with the Act, because the work is not national or federal work as required by the Universal Military Training and Service Act.

7. The Act, as construed and applied by the regulations and the order, calls for a private non-federal labor draft for the performance of services that are not exceptional or related to the National defense, in violation of the Thirteenth Amendment to the United States Constitution.

8. The Act, as construed and applied by the regulation and order, is unconstitutional because it deprives the defendant of due process of law contrary to the Fifth Amendment to the Constitution.

9. Section 462 (a) of the Act, Part 1660 of the regulation insofar as they have been construed and applied to the defendant are an unreasonable abridgment of his right of property contrary to the Fifth and Fourteenth Amendments to the United States Constitution.

10. Sections 1660.20 (d) and 1660.30 of Part 1660 of the Regulations are contrary to the First, Fifth, Thirteenth and Fourteenth Amendments to the United States Constitution.

11. The draft board lost jurisdiction to order appellant to report for induction because he was denied procedural due process of law in that the Department of Justice illegally deprived him of his right to an investigation, hearing, report and recommendation upon his claim for classification as a conscientious objector, contrary to Section 1626.25 of the Selective Service Regulations and Section 6 (j) of the act.

12. The local board upon personal appearance deprived appellant of a full and fair hearing when it denied appellant the right to discuss further his claim for classification as a minister after he said that he was educated in a manner different from the orthodox clergy, which was in violation of his rights guaranteed by the regulations, the act, and the Fifth Amendment.

13. Defendant was denied procedural due process in that the local board failed to have available an Adviser to Registrants and to have posted conspicuously, or any place, the names and addresses

of such advisers, as required by the Regulations, and to the defendant's prejudice.

14. The local board abused its discretion by arbitrarily refusing to reopen appellant's classification on two occasions, namely, November 4, 1953, and February 23, 1954, when he presented evidence, which, if true, required reclassification and in failing, on each occasion to forward the file to the Appeal Board after its refusal to reopen the classification.

15. The local board upon personal appearance deprived appellant of a full and fair hearing when it limited appellant to 5 minutes to discuss further his claim for classification as a minister, which was in violation of his rights guaranteed by the regulations, the act, and the Fifth Amendment.

Respectfully submitted,

/s/ J. B. TIETZ.

[In pencil following signature.] 16. Reese not given opportunity to submit jobs which he would do. (SS 152 see.)

[Endorsed]: Filed September 8, 1954.

[Title of District Court and Cause.]

MINUTE ORDER—OCTOBER 4, 1954

This case came on regularly this day for ruling, on Motion for Judgment of Acquittal and on Merits of the Case tried before this Court sitting without a jury on 8th day of September, 1954.

Defendant present in pro per having previously waived presence of J. B. Tietz, Esq., his attorney. James S. Eddy, Esq., AUSA, present on behalf of the U. S.

It Is Ordered that the Motion for Judgment of Acquittal be, and the same is, hereby Denied, and that the defendant be, and is, adjudged Guilty as charged in the Indictment.

It Is Further Ordered that the defendant be allowed to remain on bail heretofore posted, and that the matter of pronouncement of Judgment and Sentence be, and the same is, hereby continued to the 12th day of October, 1954, at the hour of 9:30 a.m. before Oliver J. Carter, District Judge in San Francisco, California.

United States District Court for the Northern
District of California, Northern Division

No. 11195

UNITED STATES OF AMERICA,

vs.

JERRY LEE REESE

JUDGMENT AND COMMITMENT

On this 12th day of October, 1954, came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of violation of Section 12(a),

Universal Military Training and Service Act, 50 U.S.C. App. 462(a).

(Defendant Jerry Lee Reese did, on or about February 26, 1954, at Oroville, California, knowingly refuse and fail to comply with the order of Local Board No. 11 of the Selective Service System at Oroville, California, to report to said Local Board No. 11 to be given instructions to proceed to a place of employment designated by said Local Board No. 11 for the purpose of doing civilian work contributing to the maintenance of the national health, safety and interest),

as charged in the indictment (single count); and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) Year and One (1) Day.

Ordered that the defendant be granted a stay of execution of judgment for period of twenty-four (24) hours.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and

that the copy serve as the commitment of the defendant.

/s/ OLIVER J. CARTER,

United States District Judge.

The Court recommends commitment to an institution to be designated by the U. S. Attorney General.

[Endorsed]: Filed October 19, 1954.

Entered October 20, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Appellant, Jerry Lee Reese, resides at Florin, California. Appellant's Attorney, J. B. Tietz, maintains his office at 534 Douglas Building, 257 So. Spring Street, Los Angeles 12, California.

The offense was failing to proceed to a place of employment designated by his local board, contrary to U. M. T. & S. Act, Title 50 App., Sec. 462 (a).

On October 12th, 1954, after a verdict of Guilty the Court sentenced the appellant to confinement in an institution to be selected by the Attorney General for one year and one day.

I, J. B. Tietz, appellant's attorney, being authorized by him to perfect an appeal, do hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

/s/ J. B. TIETZ,

Attorney for Appellant.

[Endorsed]: Filed October 12, 1954.

[Title of District Court and Cause.]

EXTENSION OF TIME

For good cause shown, defendant is hereby given 60 additional days, to and including January 21, 1955, to prepare and docket the record on appeal.

Dated: November 8, 1954.

/s/ OLIVER J. CARTER,
Judge.

[Endorsed]: Filed November 8, 1954.

In the United States District Court in and for the
Northern District of California, Northern
Division

No. 11195

UNITED STATES,

Plaintiff,

vs.

JERRY LEE REESE,

Respondent.

TESTIMONY OF WITNESSES

September 8th, 1954

DORIS J. PROUTY

called to the witness stand, having first been duly and regularly sworn by Mr. Cyr to testify the truth, the whole truth, and nothing but the truth in the matter of her testimony, testifies as follows:

Mr. Cyr: Will you spell the last name?

Mrs. Prouty: P-r-o-u-t-y.

Mr. Cyr: Doris J. Will you take the witness stand?

(Testimony of Doris J. Prouty.)

By Mr. Eddy:

Q. You have given us your name, Mrs. Prouty. What is your address, please?

A. Route 5, Box 1045, Oroville.

Q. And are you the Clerk of Local Board 11 of the Selective Service System? A. Yes.

Q. And as such Clerk, are you the custodian of the records of that Board? A. Yes.

Q. Have you brought certain records with you today? A. Yes.

Q. What records are they?

A. It is the complete file and cover sheet for the defendant, Jerry Lee Reese.

Q. And is Jerry Lee Reese a registrant with Local Board 11? A. Yes. [1*]

Q. Do you know him? A. Yes.

Q. Is he present in Court? A. Yes.

Q. Is he sitting over there with his Attorney?

A. Yes.

Q. Were these—was this file kept regularly in the regular course of business of Local Board 11?

A. Yes.

Q. May I see it, please? A. Yes.

Mr. Eddy: May it please the Court, we have photostated this file, but the trial date was—they are still being developed, and I intend to offer this in evidence, and ask the Court's leave that when the photostated copy is ready, it may be substituted for the original copy.

(Testimony of Doris J. Prouty.)

Judge Carter: Do you have any objection to that, Mr. Tietz?

Mr. Tietz: No objection.

Judge Carter: All right, then, the original will be taken in evidence as defendant's Exhibit Number One. The whole file?

Mr. Eddy: The whole file.

Judge Carter: Well, when the photostatic copies have been prepared, they may be substituted in lieu of the original. [2] Now the whole file is in evidence, and you may refer to such part as you wish to.

Mr. Eddy: Very well, your Honor. May I ask the clerk if—what classification this registrant bears with the Local Board 11 at this time?

A. (By Mrs. Prouty): 1-O classification.

Q. And does the file reveal when he was so classified? A. Yes.

Q. Will you give me that date, please?

A. January tenth, 1952.

Q. And was he notified of this classification?

A. Yes.

Q. When was he so notified?

A. January fourteenth, 1952.

Q. Did he take—does the file reveal if he took any appeal from this classification?

A. No, he did not.

Q. Does the file reveal if he was ordered to report to Local Board 11 to do work of national importance on or about the fifteenth day of February, 1954? A. Yes, it does.

(Testimony of Doris J. Prouty.)

Q. What is there in the file that would indicate that?

A. There is the SS form 153, the order to report for civilian work, and statement. [3]

Q. Was that mailed to him? A. Yes.

Q. Who mailed it?

A. Local Board—I did.

Q. Did you mail it? A. Yes.

Judge Carter: What was that sent?

A. September fifteenth, 1954.

Q. (By Mr. Eddy): And does the file contain that communication from him in response to this order to report for work of national importance?

A. Yes. On February twenty-sixth, 1954, we received his letter acknowledging the receipt of the order, and his statement that he couldn't accept the job.

Q. Did he give you reasons?

A. Yes. He says, "I cannot conscientiously accept any job that will interfere with my God-given duties." Do you want me to read the whole letter?

Q. No. Does he—when was this letter received?

A. February twenty-sixth, 1954.

Q. And was this before or after the day on which he was supposed to report?

A. This was after, as he was ordered to report on the twenty-fifth day of February.

Q. You received this on the following day? [4]

A. Yes.

Q. This was received, then, eleven days after

(Testimony of Doris J. Prouty.)

the order was mailed to him, and one day after he was supposed to report, is that right?

A. Yes.

Q. Does he make any other claim in this letter?

A. Yes.

Q. What does he claim?

A. He says, "I was appointed to a more important position in my church. This appointment is to the position of Assistant Congregational Servant. This position increases my field of ministry, the time spent and the people served. In addition to this new position, I still have the duties outlined to you in a previous letter."

Q. Is this the first time he notified the board that he had been appointed to that particular position in the church? A. Yes.

Q. Now, did the Board respond to that portion of his letter received on the twenty-sixth of February?

A. Not to that portion, because he had already been ordered.

Q. Well, did you not write him a letter?

A. Yes—oh, yes, we acknowledged receipt of his letter, and wrote to him. [5]

Q. Yes. Well, will you find that letter and read it to the Court?

A. "This is to acknowledge receipt of your letter which was received this date. The local board is without authority to reopen your classification, since you were ordered to report for civilian work in lieu of induction. The SSS form 1953, Order to

(Testimony of Doris J. Prouty.)

Report for Civilian Work, was mailed February fifteen, 1954, reporting date was February twenty-five, 1954. Since you failed to report, your complete file is being forwarded to California State Headquarters for Selective Service, according to Selective Service Regulations 1660.30. Very truly yours, Local Board 11."

Q. Now, in addition to his letter received February twenty-sixth, had this registrant at any time made a request for reopening of his classification?

A. Yes.

Q. And when was that?

Mr. Tietz: February thirty.

Q. (By Mr. Eddy): It was in July of 1953?

A. (By Mrs. Prouty): Yes.

Judge Carter: It would be subsequent to that time, wouldn't it?

Mr. Eddy: No, this was in 1954.

Judge Carter: On this February twenty-sixth, it was '54?

Mr. Eddy: Yes, your Honor. [6]

A. (By Mrs. Prouty): Yes, this one is October 22, 1953, he wrote requesting a consideration.

Q. (By Mr. Eddy): What grounds did he urge upon the Board at that time?

A. He states that he cannot accept the work, and "I hold a position that is termed as Area Study Conductor. My duties in connection with this position entail teaching an educational class of forty persons every Wednesday from 7:30 to 8:30 p.m. This is a Bible study, and the public is invited. Also

(Testimony of Doris J. Prouty.)

on Saturday and Sunday at 9:30 a.m. I have charge of this same group and direct it in our preaching activity from house to house for two hours each of these mornings. At this time I also train newly interested persons in proper methods of preaching the good news of God's kingdom to individuals at their homes. In addition to this, on Monday evenings at 6:45 I aid several members of the group, if it is not under my direction, in starting home Bible studies with people they have contacted in their house to house preaching activities."

Q. What was his classification at that time?

A. He was 1-O.

Q. Did he ever make a request for a deferment on the basis he was an apprentice?

A. Yes, he did.

Q. When did he make that?

A. This was received October 27th, 1952, by the local board.

Q. And what action was taken on that [7] request?

Judge Carter: What was the request on October twenty-seventh?

Q. (By Mr. Eddy): What was that request?

A. It was a request for a deferment to be an apprentice bricklayer.

Q. And what action was taken on that request?

A. A Board meeting was held, and—on July the ninth, 1953, and this form he mailed in was considered, and was not acted upon by the Board; but it was considered.

(Testimony of Doris J. Prouty.)

Q. What action was taken with respect to his request for a reopening in 1953? Because he was an Area Bible teacher?

A. Yes. A Board meeting was held, and at the Board meeting his complete file was reviewed, and new evidence was considered, and the Board retained him in the 1-O classification.

Q. In the 1-O classification? A. Yes.

Mr. Eddy: No further questions.

Mr. Tietz: No cross-examination.

Mr. Eddy: You may step down.

Judge Carter: Will you step down, please, Mrs. Prouty?

(Thereupon the witness leaves the stand.)

Mr. Eddy: No further evidence, your Honor. The Government rests.

Judge Carter: Mr. Tietz, you will stipulate that the [8] defendant refused to report for the work that he was ordered to do in SS form 1953 on February fourteen, 1954?

Mr. Tietz: Yes, sir.

Judge Carter: There is no—would be no point on that at all—that is, there will be no contest of that fact?

Mr. Tietz: Not on that fact, no.

Judge Carter: All right. The Government rests. Now, do you wish to have your motion for judgment put on trial now?

Mr. Tietz: Yes, sir, and I would like, unless the Court wishes otherwise, to argue that point now.

Judge Carter: All right. The motion will be filed on that point. Well, on those grounds, you may argue, Mr. Tietz.

(Thereupon ensued an argument by Mr. Tietz upon the motion, after which the Court was recessed from 11:58 a.m. to 1:30 p.m.)

Mr. Tietz: The defendant would like to call Colonel Henderson as our witness.

WALTER H. HENDERSON

called to the witness stand, having first been duly and regularly sworn by Mr. Cyr, to testify the truth, the whole truth, and nothing but the truth in the matter of his testimony, testifies as follows:

Q. (By Mr. Cyr): Your first name, [9]
Colonel?

A. Walter H. Henderson.

Mr. Cyr: Take the witness stand.

By Mr. Tietz:

Q. Colonel, would you please state your rank and your occupation?

A. Lieutenant Colonel Walter H. Henderson, Civilian Manpower Division, State Headquarters, Selective Service, California.

Q. Your duties require you to have a certain degree of familiarity with the Selective Service regulations? A. They do.

Q. And at all times concerned in this particular case—that is, the years 1951, 1952 and 1953, there

(Testimony of Walter H. Henderson.)

was a regulation in effect, Number 1604.41, that required local boards to have one or more advisers to registrants, and to have the names and addresses of those advisers posted in a conspicuous place in the Board office?

A. There was a section of regulations in effect during that period which provided for the appointment of advisers to registrants. I don't recall the number of it.

Judge Carter: Are you talking about the Code of Federal Regulations?

A. 1604.41.

Mr. Eddy: May it please the Court, I think the Code of Federal Regulations speaks for itself.

Judge Carter: I don't know whether it does or not. [10]

Mr. Tietz: Well, I thought it would be helpful if we would establish that that particular regulation has not been at any time suspended. Isn't it a fact, Colonel, that the——

Judge Carter: If there is an objection, I will entertain it.

Mr. Eddy: I will object to the opinion of this witness as to the law.

Judge Carter: Well, if he wants to know if there has been any change in it, and wants to know how long it has been in effect, you may go into that; but as to the law itself, that is a question for the Court; but as to whether it was in effect and——

Mr. Tietz: Would you answer the question, Colonel?

(Testimony of Walter H. Henderson.)

A. (By Colonel Henderson): Would you state the question again?

Mr. Eddy: Would you like to see a copy of that regulation?

Judge Carter: You wanted to know how long that regulation was in effect, is that the point?

Mr. Tietz: I want to establish by this witness that this particular regulation has never added a comma in the version that was in effect in '51, '52 and '53, and that any version available to the Court—the Court generally has the 1949 version—would be useful to the Court.

Judge Carter: Well, has there been any change in [11] those years?

A. (By Colonel Henderson): None that I can recall.

Q. (By Mr. Tietz): Do your duties involve an inspection or some degree of supervision of Local Board Number 11, California?

A. Not directly.

Q. Are you familiar with their operations?

A. No, I can't say that I am.

Q. Can you tell us of your own knowledge whether or not this Local Board has ever had an advisor to registrants as designated in 1604.41?

A. Yes, there are two advisors to registrants appointed to that Local Board.

Q. Under Section 1604-41?

A. So I understand from the personnel records of the State Headquarters, yes.

(Testimony of Walter H. Henderson.)

Q. Well, were these advisors for this Local Board in 1951, '52 and '53?

A. As I recall, their appointments were made in 1950.

Q. Do you know if they were serving in 1951, '52 and '53?

A. Well, I can only judge on the record, and according to that, their appointments were still in effect during those years, yes.

Mr. Tietz: That's all. [12]

Judge Carter: Any further questions?

Mr. Eddy: No further questions.

Mr. Tietz: Thank you, very much, Colonel. The defendant will call the clerk of the Local Board, Miss Prouty.

Mr. Cyr: Let the record show this witness here heretofore been sworn, and her name is Doris J. Prouty. Will you take the witness stand?

DORIS J. PROUTY

resumes the witness stand.

By Mr. Tietz:

Q. Miss Prouty, will you give us the name or names of the advisors to registrants of your Local Board?

A. (By Mrs. Prouty): Albert King.

Q. Would you spell that, please?

Judge Carter: Former Assemblyman Albert King. He is an attorney-at-law in Oroville. He used to be the Assemblyman in that district; although I don't know if it is Albert H.

(Testimony of Doris J. Prouty.)

A. (By Mrs. Prouty): Albert H., I think it is. K-i-n-g.

Mr. Tietz: I have been dumbfounded by the fact that there have been advisors to any Local Board in California.

Judge Carter: That is the same Albert King I am speaking of?

A. (By Mrs. Prouty): Yes, he is a very popular attorney.

Q. (By Mr. Tietz): Was he the advisor in 1951, '52 and [13] '53?

A. So far as I knew, yes. Since I have been there, anyway.

Q. Do you have a bulletin board in your local board office?

A. I wouldn't exactly call it a bulletin board, but we do have forms posted on the board.

Q. You have a place where you post the requests of—changes in classification, and listing registrants, and such? A. Yes.

Q. Is that the only place where you post information to the public? A. Yes.

Q. Have you during all of 1951, '52, '53 had the name and address of Albert King posted there?

A. No.

Q. Has it ever been posted, to your knowledge?

A. Not to my knowledge, no.

Q. It isn't posted now? A. No.

Q. It wasn't posted in '52 or '53? A. No.

Mr. Tietz: That's all.

Judge Carter: Any questions, Mr. Eddy?

(Testimony of Doris J. Prouty.)

Mr. Eddy: Mrs. Prouty, have you ever assisted registrants [14] in the preparation of their forms and questionnaires?

Mr. Tietz: I will object. That is immaterial.

Judge Carter: Will you repeat the question?

Mr. Eddy: Certainly. I am asking this clerk if she has ever assisted registrants in the preparation of their forms and questionnaires.

Judge Carter: I will sustain the objection. That is immaterial.

Mr. Eddy: Your Honor, if this witness were permitted to answer the question, I believe I can show that the function which was intended to be performed by these advisors to registrants were performed by this clerk and by members of the board.

Judge Carter: Well, of course, that, I don't think, is the answer to the regulation if the regulation applies in the manner in which it should. Perhaps I should, out of an overabundance of caution, permit the testimony to be taken, and then grant your motion to strike it, and then if I am not around, you can take it up, Mr. Eddy; so I will, subject to a motion to strike, permit you to take the testimony, and if I am not around, there will be something in the error to be corrected.

Mr. Eddy: Will you answer the question, please?

Judge Carter: He wants to know if you assisted applicants—registrants. [15]

A. (By Mrs. Prouty): Yes, I do.

(Testimony of Doris J. Prouty.)

Q. Do you know if members of Local Board Number 11 have assisted registrants similarly?

Mr. Tietz: Same objection.

Judge Carter: Same ruling.

A. (By Mrs. Prouty): To my knowledge, they haven't helped any registrants fill out any forms. I always help them in the local board.

Q. (By Mr. Eddy): Have you advised any registrants as to their rights and liabilities under the Selective Service law? A. Yes.

Q. Do you know who?

Mr. Tietz: Continue the objection.

Judge Carter: Yes, it will be to the full amount.

Q. (By Mr. Eddy): Do you know if any members of the board have similarly advised registrants as to the liabilities and rights under the Selective Service law?

A. Since I have been clerk, I don't believe the local board members or the appealing have done any advising on their own. I have had several telephone calls from the same, many for the regulations, and giving the information that a registrant has taken to them.

Q. Were members of the board available to registrants for that service? [16] A. Yes.

Q. Did you—speaking now particularly of this defendant, did you advise him as to his rights or liabilities under the Selective Service law?

A. I can't recall that he ever asked for any information like that. We have talked to him. I

(Testimony of Doris J. Prouty.)

imagine it was information he wanted when he was in the office.

Q. Would you have advised him, had he asked you? A. Yes.

Q. And you have dealt with him face to face, have you, in the line of work? A. Yes.

Mr. Eddy: No further questions.

Mr. Tietz: I renew my objection.

(Thereupon ensued a discussion between Counsel and Judge Carter.)

Q. (By Mr. Tietz): You have heard Mr. Eddy say you have been always ready, willing, and I suppose he meant able to advise on Selective Service matters?

A. (By Mrs. Prouty): Yes.

Q. Have you ever advertised that fact to these young men? Have you posted anything or in any way let them know that you were there to help them?

A. I certainly have. I have spent hours talking to some registrants and advising them of their rights, and I [17] am very happy to explain it all to them.

Mr. Tietz: I move to strike that as non-responsive. I meant you advertised so that everyone will know.

Judge Carter: I understand what you mean, and I don't think she understood your questions in the way it was put.

Mr. Eddy: The fact she would be present in the

(Testimony of Doris J. Prouty.)

room with other registrants, or advising one, would be advertising to others, and I believe it is responsive.

Judge Carter: No, I don't think it is responsive to the question as put by Mr. Tietz. What Mr. Tietz wants to know, Mrs. Prouty, is there any notice given to the registrant that the clerk, board, or any official would be available to advise them? Is there any type of notice given to them so that they know to whom to go?

A. (By Mrs. Prouty): At the time they register, we do talk to them, and I make it a point to advise them of all their rights, so that they may come in and add anything to their file. I do go over that thoroughly with them, so that they understand just what—that this local board is always their local board, and any information on any classifications always comes from that particular local board, because they are always moving around, and I certainly do.

Q. Do you tell them at any other time except when they register?

A. Unless them come in. [18]

Q. Unless they ask. Now, this young man registered before you became a clerk of the local board, didn't he?

A. Yes.

Q. Do you recall you ever told him that any time he wanted to know anything about Selective Service procedures, you would help him?

A. No, not this particular registrant.

Q. Now, when you sent out C-140's telling him

(Testimony of Doris J. Prouty.)

the evidence he gave was in the opinion of the board insufficient for the board to reopen the case, did you advise him that might be considered by some judge, an appeal board order, and, therefore, he should appeal from that C-140?

Mr. Eddy: I will object to that, your Honor, I can't understand it myself.

Judge Carter: Yes, the question is rather difficult.

Mr. Tietz: I might say that a District Judge said to me once that is an appeal board. I said, "There is no such thing. The only thing you appeal is a classification." Now, that C-140, as the witness knows, is—I will read it.

Judge Carter: Well, I don't know what a C-140 is. The witness may know.

Mr. Tietz: I think I better read it.

Q. Mrs. Prouty, you have a form that is used by your local board called C-140? A. Yes. [19]

Q. And it is a mimeographed form, and reads as follows: (Thereupon Mr. Tietz reads the form.) Now, on November the 4th, 1953, was page twenty-six of the exhibit and on pages twenty-three and fifty-four, which is page fourteen of the exhibit, you sent out on those C-140's, did you not?

A. Yes.

Q. Did you tell him he ought to appeal from that C-140?

A. How could he appeal from a C-140? His classification wasn't reopened or changed.

Mr. Eddy: I object to the question, your Honor.

(Testimony of Doris J. Prouty.)

I believe Counsel has already argued that there is no appeal from that.

Mr. Tietz: I have argued, but I have always set that limit Judge Hanks set, it is up to the registrant to appeal everything.

Judge Carter: Well, I am not going to get in an argument with you or Judge Hanks on the matter.

Q. (By Mr. Tietz): Did you——

A. (By Mrs. Prouty): He could have appealed when he got his 110. That is the notice that says you may appeal.

Q. But you didn't send any 110 out November, 1953, or February, 1954?

A. No, his classification was not changed. [20]

Mr. Eddy: May it please the Court, I will stipulate that Counsel wishes—I don't know which side he is on—that there is no appeal from that C-140.

(Thereupon ensued a discussion between Court and Counsel.)

Q. (By Mr. Tietz): Then are we to understand that at no time did you ever give this registrant any advice?

Judge Carter: That you recollect.

A. (By Mrs. Prouty): I believe when he was in a local board and had an unofficial personal appearance, he came in to determine the type of work he would do. We were there, and advised him of all the jobs that were available, and also referred him to State Headquarters, and I believe he went to the State Headquarters and talked to someone

(Testimony of Doris J. Prouty.)

there about it; and that was advice that was given to him.

Q. (By Mr. Tietz): Did you advise him that at such particular time that he had the right to suggest certain jobs that he would be willing to do?

A. Yes, he could suggest the kind he wanted.

Q. You told him he could suggest some?

A. Well, we asked him what type of work he would like to do that was available.

Q. Oh. From the list that you gave him, is that right? A. Yes. [21]

Q. You didn't tell him he could submit a list of his own, irrespective of any list you showed him?

A. I certainly didn't.

Mr. Tietz: I wish to add a ground—a sixteenth ground, your Honor, and that is—I will state it now while it is fresh in my mind, that the regulations contemplate what might be termed a type of bargaining—that is, that the board invites the registrant to submit a list of his own, and if that list is not acceptable, then the board submits a list, and if neither list produces a mutually satisfactory result, that an arbitrator, usually from State Headquarters, comes down—I say arbitrator, that is my own language, but that is exactly what it means—sits down with the parties and tries in an amicable way to get them to agree, and as I understand this witness' testimony, they didn't comply.

A. (By Mrs. Prouty): Yes, we did have representatives from State Headquarters in the office

(Testimony of Doris J. Prouty.)

at the time the registrant was in, and showed him the jobs. That was the idea of it.

Q. You showed him the jobs you had for him, is that right?

A. Well, he didn't submit any that he wanted to do.

Q. Did you tell him he had the right to submit jobs that he chose?

A. Does he have the right to submit—— [22]
Mr. Tietz: Oh!

Judge Carter: Well, the question was, did you tell Mr. Reese he had a right to submit the jobs he would do?

A. (By Mrs. Prouty): I believe he has—there is a form in here which we sent him and asked him the jobs that he would do. There is one in here.

Judge Carter: In other words, you think he was sent a written——

A. Yes, there is a form in here, a volunteer for work, and we sent it to them, and they fill out the kind of work they would like to do.

Judge Carter: No reply was sent you, is that correct?

A. Yes.

Q. (By Mr. Tietz): What page was that?

A. It is this SS Form 152. The first type he has bricklaying and stone masonry. His orders are preference of work.

Judge Carter: Any further questions, Mr. Tietz?

Q. (By Mr. Tietz): Were his preferences considered at any board meeting, to your knowledge?

(Testimony of Doris J. Prouty.)

A. (By Mrs. Prouty): Let's see—he submitted this in August, 1952. That was before I was the clerk.

Judge Carter: Well, but was it ever considered——

A. (By Mrs. Prouty): The time we were trying to find work for him? [23]

Judge Carter: Yes.

Mr. Tietz: My question is, do you know or can you point to something in your official records that show that they were considered?

A. I can't point to anything that shows they are considered, but they are always considered.

Mr. Tietz: I object to that as a conclusion.

Judge Carter: Well, is that the custom and practice?

A. Yes, certainly, but I don't know of any bricklaying and stone masonry that are available at the present time. There might have been then. We try, and always, yes. That is the reason why we have him come up and try to agree on the job. We are happy to let them pick out what they want to do.

Q. (By Mr. Tietz): Now, Mrs. Prouty, I want to ask you what preparations you have made to advise these registrants.

A. Advise them of what?

Judge Carter: Their rights under the regulations. He wants to know what preparation is made, either by way of courses of study, or——

A. Oh. I have studied the regulations of the job. Every day I study the directives that come

(Testimony of Doris J. Prouty.)

from State Headquarters, and any other directives from National Headquarters, and any time I am not sure of the regulations—one that happens to come up—why, I contact State Headquarters.

Q. (By Mr. Tietz): Do you recall reading this Regulation [24] 1604.41?

A. No, I don't recall reading it.

Q. Do you have any recollection that there was supposed to be a notice posted so that the world could see that there were some people—not necessarily the board, employees of the board like yourself who would advise registrants?

Mr. Eddy: I will object to this question, your Honor. I don't think it has any materiality. He has established the fact that advisors were appointed, but that no notice was posted. Now, what this witness knows about this regulation, I can see no materiality to it.

Q. (By Mr. Tietz): Do you know, was there ever anything ever posted letting the world know that there was an appeal or advisors available?

A. Every registrant is classified when he is eighteen and a half.

Judge Carter: When you say classified——

A. He gets his first classification, 1-A, or whatever it is, and on the 110 is the Notice of Appeal, and that, they may contact their government appeal agents on it.

Q. (By Mr. Tietz): Is there anything about advisors to the registrant?

A. I don't know if it is used in that word, "ad-

(Testimony of Doris J. Prouty.)

visors.' They may contact the government appeal agent. [25]

Q. The government appeal agent and the advisor to the registrant are entirely different functionaries, aren't they?

A. I don't know whether they are or not. I thought they were the same thing.

Mr. Tietz: That's all. Should I invite the Court's attention to the specific section, so that there won't be any question?

Judge Carter: Well, you can call the Court's attention on argument.

Mr. Tietz: That's all.

Mr. Eddy: No further cross.

(Thereupon the witness leaves the stand.)

JERRY LEE REESE

called to the witness stand, having first been duly and regularly sworn by Mr. Cyr, testifies as follows:

Mr. Cyr: Your name is Jerry Lee Reese

A. Yes.

Mr. Cyr: Will you take the witness stand?

By Mr. Tietz:

Q. You are the defendant in this case, are you not? A. Yes.

Q. Have you had an appearance before your local board on December 5th, 1951, did you [26] not? A. Yes.

Q. Have you had occasion to look at the sum-

(Testimony of Jerry Lee Reese.)

mary placed in the file, page 77 of the exhibit of this hearing? A. Yes.

Q. Is it substantially correct? A. Yes.

Q. The part that says that Mr. Grass, who is the chairman, informed registrant that they would give him five minutes to present his case, that is exactly what took place, is it? A. Yes.

Q. At this hearing did you come prepared to make any sort of presentation to the local board?

A. Yes, I did.

Q. On what subjects did you come prepared?

A. I was prepared to explain about our ministry work and minister school, how we learn to become speakers and better ministers. I had fifteen minutes prepared.

Q. Did you come prepared to discuss and argue with him on the matter of classification?

A. Well, not to argue. I did want to get my classification changed.

Q. Were you hindered in any way from making the presentation that you had intended to give?

A. Well, before I ever said anything, they said I [27] only had five minutes, and so I tried.

Q. Any other way you were hindered from making your presentation?

A. Well, I hadn't talked very long, and they asked me some questions.

Q. Do you mean the questions and the manner of asking them hindered you?

A. Yes, they changed the subject.

(Testimony of Jerry Lee Reese.)

Q. If you had more time, if you hadn't been cut off, what would you have explained to the board with respect to your ministry?

A. Well, I wanted to make clear to them why Jehovah's Witnesses are organized, how it would be preaching work from door to door, calling on everyone. We use three to eight minute sermons, reading scriptures from the Bible, how we place literature with the people and call back on those people, and I start Bible studies with those that are interested, and I wanted to explain the matter of our work so they would understand just what we do.

Q. Did you get to explain the details of your work? A. No, I didn't.

Q. What would you have explained with respect to, say, studies?

A. Well, when we place literature with the people, we usually go back and try to encourage Bible study, and [28] for these studies I have prepared the lesson—that is, what we are going to study.

Q. When you say Bible study, what do you mean, just reading?

A. No, we have books that discuss various subjects, and that we have a systematic study of the Bible.

Q. Are there any other periods, then, that are termed studies, in your work?

A. Well, yes, we have studies there in Kingdom Halls, too.

Q. Do you attend those studies? A. Yes.

(Testimony of Jerry Lee Reese.)

Q. Or rather, did you during 1951, 1952, up to the present attend those studies?

A. Yes, I did.

Judge Carter: As a student, or as a teacher?

A. Well, as a teacher, mostly.

Judge Carter: That is, you directed the class?

A. Yes, I directed one of the classes every week.

Judge Carter: Well, I am talking about this one particular Kingdom Hall.

A. Yes, I direct the class at Kingdom Hall.

Judge Carter: And is that the one you referred to when you answered the question?

A. Well, we have four different meetings at [29] the Kingdom Hall, and I am director of one.

Mr. Tietz: How long is that meeting, in time?

A. One hour.

Q. It is regular each week?

A. Yes, every week.

Q. Does it require preparation? A. Yes.

Q. How much preparation, in terms of minutes, hours, does it take?

A. Well, I usually spend an hour to an hour and a half studying my lesson.

Q. Now, you speak of other studies at Kingdom Hall. Are they regular studies? A. Yes.

Q. Do you regularly attend them?

A. Yes.

Q. How much time do they take?

A. Each one is one hour.

(Testimony of Jerry Lee Reese.)

Q. Do they require any preparation on your part?

A. Yes, they do require preparation.

Q. How much time?

A. About an hour for each lesson.

Q. Now, during this period of your Selective Service processing, did you do any publishing?

A. Yes, I did. [30]

Q. Did you get to explain to the local board at this meeting what publishing is?

A. I did not.

Q. If you had the chance to explain, what would you have told them?

A. Well, I would have explained what we mean when we say 'publishing.' That means actively preaching to people in their own congregation—that is, at the people's doors, and preaching later with them, and so forth.

Q. Now, at the time how many hours a week of publishing were you engaged in?

A. About five hours a week.

Q. Now, in addition to that five hours a week, you spend how many hours a week in other religious work?

A. Well, about five hours a week studying, and then four hours a week attending meetings.

Q. Now, are there any other things that you had planned to explain to the local board that you didn't get a chance to explain at the hearing?

A. Well, as I mentioned before, I wanted to explain about our ministry school.

(Testimony of Jerry Lee Reese.)

Q. What is that?

A. That is work there in the house, where we read from the Bible and various members of the congregation give eight minute talks to the congregation on the chapter under [31] consideration. That way we learn, too, by the speakers.

Q. Now, in 1951, in December, what was your title, if any, with your local company or congregation, as it is called?

A. I was a congregation publisher.

Q. Did you at a later time have any different titles and ones that carried with them increased work?

A. Yes.

Q. Will you tell us about that?

A. In April of 1952, I was appointed as an Area Study Conductor, where I directed the study at the Kingdom Hall each week, and in February of 1954, I was appointed as Assistant Congregation Minister, and I had the duties of keeping all the records, all of the various activities the members of our congregation engage in. I keep all the records.

Q. Do you hold that title now?

A. Yes, I do.

Q. Is your time since——

Judge Carter: Just a moment. You say that is Assistant what?

A. (By Mr. Reese): Congregation Minister.

Q. (By Mr. Tietz): What relation does that have to the company servant? Would you be, technically, then, the company servant? [32]

A. Yes, assistant.

(Testimony of Jerry Lee Reese.)

Q. The word 'company' was used generally up until about two years ago, and then the word 'congregation' came into more general use, is that right? A. Yes. It means the same thing.

Q. Now, when you refer to the congregation, with respect to being Assistant Congregation Servant, you mean what congregation?

A. Sacramento South Congregation.

Q. That is a congregation of what? Laymen or ministers? A. Ministers.

Q. In other words, you are a band of ministers?

A. Yes.

Q. Do you have any other band of laymen?

A. We do not.

Q. Don't you have some territory?

A. Yes, we do have the people we preach to in their homes.

Q. Do you have a territory? A. Yes, I do.

Q. Is that territory exclusively yours to do that ministry work in? A. Yes.

Q. Do you regularly minister to the people in that [33] area? A. Yes.

Q. In what way?

A. We try to see that each home is called at least twice each six months.

Q. And what does 'back once' mean?

A. Well, 'back once' is where we go back where you place an article of literature.

Q. You mean it is a second personal call, is that it? A. Yes.

A. And what do 'home studies' mean?

(Testimony of Jerry Lee Reese.)

A. That is Bible study in the home.

Q. Of the laymen in your geographic area—your parish? A. Yes.

Q. So that you do have two congregations, that of your own band of ministers, and that of your geographic area? A. That's right.

Q. And I say you. I mean you, personally.

A. Yes, I had a personal territory.

Q. How many ministers are in your congregation of ministers? A. Ninety-three.

Q. When that congregation gets to be over a hundred, it splits up in two, doesn't it?

A. Well, when it gets up about a hundred and seventy-five, [34] it is divided.

Judge Carter: Mr. Reese, the terminology used by the Jehovah's Witnesses, are they persons on whom you call who are not members of the sect, with whom you do this ministry work, or to whom you carry a message, are they in that terminology called congregation?

A. Yes, that would be a congregation.

Judge Carter: Under the terminology used by Jehovah's Witnesses? A. Yes.

Q. (By Mr. Tietz): Is there a scriptural basis for that conception?

A. Yes. Christ Jesus set the example, and all his apostles followed that example.

Mr. Tietz: That's all.

(Testimony of Jerry Lee Reese.)

Cross-Examination

By Mr. Eddy.

Q. Mr. Reese, what is your secular occupation, please? A. I am a bricklayer.

Q. And you are working full time, are you not?

A. Not now.

Q. Were you working full time in February of this year? A. Yes, I was.

Q. And why are you not working full time now?

A. Well, beginning with this month, my wife and I have [35] entered into full time ministry work.

Q. Beginning this month, September?

A. Yes.

Q. Did you work all of last month?

A. Most of it.

Q. Now, you say there are ninety-three ministers in the congregation? A. Yes.

Q. And each has his own territory?

A. Well, some are children. They are learning to be ministers.

Q. Some are children; but of the adults, does each have his own territory? A. Yes.

Q. And he preaches from the doorstep pulpit in his own territory, is that right? A. Yes.

Q. Who is the Congregational Servant or presiding minister of your congregation?

A. Raymond Brungardt.

Q. Do you know the names of the other Assistant Congregational Servants in that congregation?

(Testimony of Jerry Lee Reese.)

A. Well, I am the only one.

Q. Who was the Assistant before you?

A. I became the Assistant when our congregation was divided. [36]

Q. And what congregation were you in before that time?

A. We were the South Unit. It was divided to make the South Unit into Fruitridge Congregation.

Q. Who was the Assistant in the South Unit before it was divided? A. Mr. Uffelman.

Q. Now, on the day you were supposed to report for work, it was the twenty-fifth day of February, was it not? A. Yes.

Q. Now, you did not report for work, did you?

A. No, but I did mail a letter, and I intended for the letter to get there on the twenty-fifth.

Q. But it got there on the twenty-sixth, as a matter of fact?

A. Well, it should have got there on the twenty-fifth.

Judge Carter: You mailed it on the twenty-third, or twenty-fourth?

A. Probably the twenty-fourth. I wrote it on the twenty-third, and mailed it next day.

Q. (By Mr. Eddy): Until that letter was received by the board, you had made no request to reopen your classification on the basis that you were an Assistant Congregational Servant, had you?

A. No.

Q. What was the date this South was split from Fruitridge? [37]

(Testimony of Jerry Lee Reese.)

A. I received the appointment on February the tenth.

Q. Is that the date that the split took place?

A. Well, we operated as one congregation until the first of March.

Q. Oh, you operated as one congregation until the first of March, and it wasn't until the first of March that you assumed your duties as the Assistant Servant for South, is that right?

A. Well, I started taking over the duties and learning what they were as soon as I received the appointment.

Q. But the actual split did not take place until the first of March, is that right?

A. That's right.

Q. How many adults were there in the South congregation before the splitting took place?

A. Before?

Q. Before.

A. I would say there were a hundred and fifty.

Q. A hundred and fifty adults? A. Yes.

Q. And how many adults are there in the South congregation now?

A. I would say in the neighborhood of seventy.

Q. Do you know if you were given this position as [38] Assistant Company Servant because of your draft status? A. I was not.

Q. You were placed in a 1-O classification by the appeal board, were you not? A. Yes.

Q. And you were sent a formal notice of that classification, were you not? A. Yes.

(Testimony of Jerry Lee Reese.)

Q. And you then became aware of your new classification? A. Yes.

Q. You didn't appeal from that classification, did you? A. No.

Q. Why did you not?

A. Well, at that time I thought they would allow me to continue with my preaching activities and stay home.

Q. You were satisfied with it at that time, is that right?

A. Well, I wasn't entirely satisfied, no.

Q. But you didn't appeal?

A. No, I didn't.

Q. You were aware of your right to appeal at that time, were you not? A. Yes. [39]

Q. Prior to the time of your personal appearance before the board, you prepared in writing—I should say in typewriting—five pages of explanation of your position, did you not?

A. Yes, five and a half.

Q. And is this—it is page seventy-nine, your Honor.

Mr. Tietz: Mr. Eddy, is that dated October twenty-second, '53?

A. (By Mr. Reese): December tenth.

Mr. Eddy: '51.

Mr. Tietz: What date?

Mr. Eddy: It was received December ten, '51?

A. (By Mr. Reese): That was submitted at the personal appearance.

(Testimony of Jerry Lee Reese.)

Q. (By Mr. Eddy): Did you give this to the board at your personal appearance? A. Yes.

Q. You prepared this language, did you not?

A. Yes, I did.

Q. And you presented it with that, did you not?

A. Yes.

Q. And in your presentation of this document, you considered what you wanted to present to the board, did you not? A. Yes. [40]

Q. And you included that in your written presentation, did you not? A. Yes.

Q. And you gave this to the board?

A. Yes.

Q. Would it be fair to say that this written argument was a fair likeness of what you intended to convey to the board at that time? A. Yes.

Q. And you included there, I believe, and I read, beginning on forty-three, "I enrolled in the Theocratic Ministry School, wherein they present sermons from the various Bible subjects for presentation to the congregation." That is a reference to the Theocratic Ministry School? A. Yes.

Q. Wouldn't it be fair to say that your written explanation contained all of the presentation which you wished to present to the board? A. No.

Q. Did you think of something that you wanted to tell the board between the time that you wrote this and the time you appeared?

A. Well, I had a short talk, you might say, to

(Testimony of Jerry Lee Reese.)

give to the board, and explain fully our [41] ministry.

Q. Were there any particular substantial points that you wanted to present about yourself that are not in this document?

A. I don't believe I mentioned in there that I give hour sermons.

Q. Will you look at the third paragraph? You mention presenting sermons, in the third paragraph.

A. But those mentioned here aren't the hour sermons.

Q. It doesn't say 'hour'? A. No.

Q. It just says 'sermons'?

A. See, I prepare our sermons, which are public talks given to the public rather than to the congregation especially.

Q. Is that the only thing?

A. Well, I believe there were other points that I had not presented.

Q. I believe you told on your—you testified on your direct examination that you wanted to tell them about the Theocratic Ministry School, but I see that is in your written presentation.

Judge Carter: Would you answer audibly? Is that a question?

Q. (By Mr. Eddy): Is there anything in particular, other than this hour sermon, that you believe you have [42] omitted?

A. Well, that was three years ago. I don't recall everything, but I did have additional information to present.

(Testimony of Jerry Lee Reese.)

Judge Carter: Mr. Reese, was that information information about your personal activities, or was it general information about activities of the Jehovah's Witnesses?

A. Well, it was about myself, and then the general nature of the work; it would be general too.

Q. (By Judge Carter): Now, you were aware at the time that this draft board had heard similar discussions by other members of your own company? A. No.

Q. Well, maybe I shouldn't say 'your own company,' but they had had the problem of considering Jehovah's Witnesses' requests before, had they not?

A. No doubt.

Q. Had you ever appeared with any other young men who were subject to the Selective Service laws at the time they made their presentation to the board? A. No, I haven't.

Q. You haven't had that experience before?

A. No.

Q. So that your discussion was to relate your personal dealings with your religious activities, rather than to [43] make a general discussion of the nature of your —of Jehovah's Witnesses?

A. Yes, primarily it was a personal discussion to all my relationship.

Q. I just wanted to be sure, because I am quite sure the draft board has heard the general character of the work of Jehovah's Witnesses a number of times before.

(Testimony of Jerry Lee Reese.)

Q. (By Mr. Eddy): What was your status in the chapter at that time?

A. Congregation Publisher.

Q. What were your duties there?

A. Well, I was—I gave, as I mentioned, hour talks to the public, I have short sermons in our meetings to the congregation to incite all the brothers to more Christian activities, and of course we are laid upon by Christ Jesus to present the good news of the kingdom, so I did engage in that work. I was also conducting a Bible studies at that time to individuals.

Judge Carter: I think you also explained you went from door to door in publishing?

A. Yes.

Q. And you had a certain area to cover and you attempted to cover that at least twice a year?

A. Yes, all Jehovah's Witnesses have that to do, but being an Assistant Minister and Publisher gives more work. [44]

Q. You were the Congregation Publisher?

A. Yes. At that time I had no special title.

Q. (By Mr. Eddy): You had no special title?

A. I was not an Assistant Congregation Minister, or anything of that type.

Q. You didn't assume those duties until March first of this year?

Judge Carter: He said February tenth.

Mr. Eddy: He received the appointment on February tenth, but the church of which he was to be the Servant was not in existence until March.

(Testimony of Jerry Lee Reese.)

Q. Now referring to the personal appearance again, is it not true that you had ample time in five minutes to explain to the board your personal problems in addition to what you had presented in writing?

A. Well, I had more than five minutes talking prepared.

Q. But to tell the board about your personal relationship to the church in addition to what you had written, five minutes was ample time, was it not?

A. But I wasn't given five minutes to do that, because they questioned me during the five minutes.

Q. How much time did they devote to questioning you?

A. Oh, approximately two minutes, perhaps.

Mr. Eddy: No further questions. [45]

Redirect Examination

Mr. Tietz: A point or two I would like to clear up.

Q. Every member of the congregation is a publisher, is he not? A. Yes.

Q. How many Servants are there, normally, in a congregation? A. Eight.

Q. You were not a Servant in December, 1951?

A. No.

Q. When did you first become a Servant?

A. I believe it was April tenth, 1952.

Q. And then you advised the local board and they sent this C-140 saying they wouldn't reopen?

(Testimony of Jerry Lee Reese.)

A. Yes.

Mr. Tietz: That's all.

Recross-Examination

By Mr. Eddy:

Q. Well, what are the duties of these Servants? When you say eight, does that include the Congregational Servant? A. Yes, it does.

Q. Are there seven others? A. Yes.

Q. Can you tell me what those titles are?

A. There is an Assistant Congregational Servant, the [46] Bible Study Servant, the Territory Servant, Advertising Servant, Account Servant and Watchtower Study Conductor, and the Area Bible Study Conductor.

Q. Do the ministers have regular meetings where they congregate together and worship?

Judge Carter: I think you are—when you are talking about the ministers——

Mr. Eddy: I am talking about the ninety-three members now.

A. (By Mr. Reese): Yes.

Q. Where do they hold those meetings?

A. In the Kingdom Hall.

Q. How often do they hold those meetings?

A. Three meetings a week.

Q. Who presides at those meetings?

A. Well, at the theocratic ministry, it is presided over—I forgot a Servant, there is a Theocratic Ministry School Servant, too. He gives counsel on the way to preach, talks, and to help the brothers become better speakers.

(Testimony of Jerry Lee Reese.)

Q. Is that one of the meetings of the week?

A. Yes, that is one of the meetings of the week.

Q. And the Theocratic Servant presides over those meetings, is that right? A. Yes.

Q. What day of the week is that held? [47]

A. Friday evening.

Q. All right. What other meetings do you have?

A. Immediately following that—the theological meeting starts at seven-thirty. At eight-thirty we have the Servants' meeting. That is presided over by the Congregational Servant.

Q. What other meetings?

A. On Sunday we have the Watchtower Study and the public talks. All the public talks are advertising by talebearing.

Q. And who presides over the Watchtower meetings? A. The Congregational Servant.

Q. And how about the Bible talks?

A. Well, various brothers are used to announce the speaker, and of course the speakers are usually from our own congregations.

Q. Are those the four meetings, now, that you have mentioned—the two on——

A. Then there is the area studies on Wednesday.

Q. On Wednesday? A. Yes.

Q. Where is that held?

A. They are five, in our congregation. One is at the Kingdom Hall, and four are in various homes, and I preside over the one at the Kingdom Hall. [48]

(Testimony of Jerry Lee Reese.)

Q. Is that a meeting of the entire congregation?

A. Well, all our members are assigned to the different congregations.

Q. I mean, that is five different meetings?

A. Yes.

Q. They are small study groups?

A. That's right. Personal study groups.

Q. So that really isn't a general meeting, is it?

A. Well, everyone meets on that night, but in different places.

Q. Now, if a Congregational Servant is not present at the service meeting, who presides?

A. I do.

Q. And if you are not present, who presides?

A. The Bible Study Servant.

Q. If he is not present, who presides?

A. Whoever the Congregational Servant would be.

Q. But there are three of you who have a definite order of presiding at the service meeting, is that right?

A. Yes.

Q. And in the event that one of the three is not present and the Congregational Servant has not appointed anyone, who would preside?

A. Well, that has never happened.

Q. That has never happened in your experience, is that [49] right?

A. Not to my knowledge.

Q. Well, knowing what you do of the principles of this church, what would happen under those circumstance?

(Testimony of Jerry Lee Reese.)

A. Well, the Theocratic Minister Servant might take the job.

Q. One of the other servants could probably take the job?

A. They would probably get together and decide for someone to conduct the meeting.

Judge Carter: The congregation itself could decide, couldn't they?

A. Well, no, the servants would decide.

Q. (By Mr. Eddy): One of the eight servants would preside? A. Yes.

Mr. Eddy: No further cross-examination.

Mr. Tietz: Nothing further. The defense rests. I will renew my motion, your Honor.

(Thereupon ensued argument by [50] Counsel.)

Reporter's Certificate

This is to certify that I, Lois Femling, a competent shorthand reporter, was present at the time and place the foregoing proceedings were had and taken; that I did report the same in shorthand writing; that I afterward transcribed my said shorthand writing to typewriting; that the foregoing, beginning at the top of page 1, to and including line 20 of page 50 hereof, constitute a full, true, complete and correct transcription of the testimony of witnesses at said hearing.

Dated this 3rd day of December, 1954.

/s/ LOIS FEMLING,
Reporter.

[Endorsed]: Filed December 8, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO
RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents listed below, are the originals filed in this Court in the above-entitled case, and that they constitute the record on appeal herein as designated by the parties.

Indictment.

Motion for judgment of acquittal.

Minute order of October 4th, 1954.

Judgment and commitment.

Notice of appeal.

Designation of record on appeal.

Order extending time to docket appeal.

One (1) volume Reporter's Transcript.

Plaintiff's exhibit No. 1.

In Witness Whereof, I have hereunto set my hand and the seal of said Court this 9th day of December, 1954.

[Seal]

C. W. CALBREATH,
Clerk;

By /s/ C. C. EVENSEN,
Deputy Clerk.

[Endorsed]: No. 14596. United States Court of Appeals for the Ninth Circuit. Jerry Lee Reese, Appellant, vs. United States of America, Appellee. Transcript of Record, Appeal From the United States District Court for the Northern District of California, Northern Division.

Filed: December 10, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals for the
Ninth Circuit

No. 14596

JERRY LEE REESE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON AP-
PEAL

Appellant will rely upon the following points in the prosecution of his appeal from the judgment entered in the above-entitled cause.

I.

The denial of the ministerial classification is illegal, arbitrary and capricious because the draft board employed artificial standards in determining what constitutes a minister of religion within the meaning of the act and regulations: and they did not follow the definition of the term used in the act and regulations in determining the claim of the defendant as a minister of religion.

II.

The denial of the claim for exemption as a minister of religion by all of the draft boards, and each

of them, is without basis in fact, arbitrary, capricious and contrary to law.

III.

The order of the local board for defendant to perform civilian work at the Los Angeles County Department of Charities and sections 1660.1 and 1660.20 of the Selective Service regulations are in conflict with the Act, because the work is not national or federal work as required by the Universal Military Training Service Act.

IV.

The Act, as construed and applied by the regulations and the order, calls for a private nonfederal labor draft for the performance of services that are not exceptional or related to the National defense, in violation of the Thirteenth Amendment to the United States Constitution.

V.

The Act, as construed and applied by the regulation and order, is unconstitutional because it deprives the defendant of due process of law contrary to the Fifth Amendment to the Constitution.

VI.

Section 462 (a) of the Act, Part 1660 of the regulation insofar as they have been construed and applied to the defendant are an unreasonable abridgment of his right of property contrary to the Fifth and Fourteenth Amendments to the United States Constitution.

VII.

Sections 1660.20 (d) and 1660.30 of Part 1660 of the Regulations are contrary to the First, Fifth, Thirteenth and Fourteenth Amendments to the United States Constitution.

VIII.

The draft board lost jurisdiction to order appellant to report for induction because he was denied procedural due process of law in that the Department of Justice illegally deprived him of his right to an investigation, hearing, report and recommendation upon his claim for classification as a conscientious objector, contrary to Section 1626.25 of the Selective Service Regulations and Section 6 (j) of the act.

IX.

The local board upon personal appearance deprived appellant of a full and fair hearing when it denied appellant the right to discuss further his claim for classification as a minister after he said that he was educated in a manner different from the orthodox clergy, which was in violation of his rights guaranteed by the regulations, the act, and the Fifth Amendment.

X.

Defendant was denied procedural due process in that the local board failed to have available an Adviser to Registrants and to have posted conspicuously, or any place, the names and addresses of such advisers, as required by the Regulations, and to the defendant's prejudice.

XI.

The local board abused its discretion by arbitrarily refusing to reopen appellant's classification on two occasions, namely, November 4, 1953, and February 23, 1954, when he presented evidence, which if true, required reclassification and in failing, on each occasion to forward the file to the Appeal Board after its refusal to reopen the classification.

XII.

The local board upon personal appearance deprived appellant of a full and fair hearing when it limited appellant to 5 minutes to discuss further his claim for classification as a minister, which was in violation of his rights guaranteed by the regulations, the act, and the Fifth Amendment.

/s/ J. B. TIETZ.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 20, 1954.

